STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: North Dakota

ELIGIBILITY CONDITIONS AND REQUIREMENTS

Process for Investigations of Complaints and Monitoring

The State has in effect the following process for investigating complaints of violations of requirements by nursing facilities and monitors onsite on a regular, as needed basis, a nursing facility's compliance with the requirements of subsection (b), (c), and (d) for the following reasons:

(i) the facility has been found not to be in compliance with such requirements and is in the process of correcting deficiencies to achieve such compliance;

(ii) the facility was previously found not to be in compliance with such requirements and has corrected deficiencies to achieve such compliance, and verification of continued compliance is indicated; or

(iii) the State has reason to question the compliance of the facility with such requirements.

I. Introduction

A. The Division of Health Facilities shall inquire into all complaints registered with the Division in an effort to determine whether the allegations can be substantiated. Authority to conduct complaint investigation is found in NDCC 23-16.05. For certification purposes investigation and processing will be consistent with Federal guidelines, policies and directives.

B. The Division shall not disclose any information regarding the investigation of an allegation except through subpoena if the investigation is conducted under our licensing authority. Refer to NDCC 23-16.09 and 23-09.3. Allegations relating to certification shall be disclosed in accordance with the Freedom of Information Act.

C. Anonymity of complainants will be maintained unless release is authorized by complainant.

D. All allegations concerning compliance with State Licensing Rules and Federal Regulations will be evaluated. Decisions pertaining to action taken regarding any allegations will be determined by the appropriate manager. Complaints dealing with programs and facilities that are licensed by the State Department of Health and Consolidated Laboratories or certified for Medicare and/or Medicaid will be managed by the Survey Process Manager. The Utilization Review Team Manager will manage complaints relating to licensed Basic Care Facilities.

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E. Allegations determined not to be within the licensing jurisdiction of the Division of Health Facilities will be referred for investigation as appropriate.

F. Complaints will be shared with other appropriately involved agencies, but only after obtaining approval from the survey process manager, utilization review team manager, and/or section chief.

II. Initial Procedure

A. Receipt and Analysis of Complaint

1. A complaint may be taken by any member of the staff. Complaints may be received from a complainant in person, by telephone or by letter. All verbal complaints will be reduced to writing by the person who received it; those who telephone with complaints will be asked to submit their complaints in writing. Should they refuse or if they are unable to write the person receiving the complaint shall obtain the necessary information by telephone.

2. A Complaint Receipt and Disposition form (SNF 8035) shall be completed. Information should include:

a. Date and name of person receiving the complaint.

b. Complainant's name, address and telephone number and whether or not anonymity is requested. It must be emphasized to the complainant that certain complaints may not easily be investigated if the complainant insists on remaining anonymous.

c. Nature of and any specific details concerning the allegation.

d. The facility involved and the names of the people involved, if any.

III. Investigative Procedures

A. If it is determined the complaint is not within the Division's jurisdiction, the complainant will be contacted and so informed. A notation will be made on the copy of the complaint regarding disposition, date, and if appropriate where it is referred. Concurrence from the complainant is desirable.

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B. The utilization review manager will categorize all complaints dealing with Basic Care Facilities and the survey process manager will categorize all other complaints dealing with licensed and/or certified health care facilities and programs as follows:

Class I - Conditions or factors which jeopardize the immediate health and safety of patients, staff, or public.

Class II - Undesirable conditions or factors which, if permitted to continue, would have the potential for jeopardizing the health and safety of patients, staff, or public.

C. In the event it is determined complaints are of a significant urgency to warrant the Class I designation, plans shall be made for investigation within 2 working days. To perform the investigation, a staff member will be selected who has a background in the profession most closely related to the concerns to be investigated, i.e. a dietitian for allegations relating to the dietary service, or a nurse for allegations concerning patient care. Ordinarily, one person should be able to handle the allegation unless multiple problems are identified. Dependent upon the nature of the allegations, additional professional staff will be used to conduct the investigation as determined by the survey process manager/utilization review manager.

D. Class II complaints shall be assigned to the appropriate staff member who will make the investigation of the allegations as scheduling permits. The appropriate manager will notify the complainant promptly in writing, that the complaint is being investigated, unless the R/O or State Medicaid Agency originally received the allegation and has already done so. If the investigation takes place within 3 working days acknowledgement is not necessary. The complainant will be notified by letter or telephone that the complaint has been received and is in the process of being investigated. Prior to conducting an investigation the individual(s) assigned to conduct the investigation will complete a provider/supplier file review.

A Class II complaint may be investigated during the next scheduled survey if approved by the appropriate manager.

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E. Complaint investigations shall be unannounced. The investigation shall be done to determine whether the complaint can be substantiated and whether corrective action is necessary. Upon arriving at the facility to investigate a complaint, the investigator is to explain the reason for the visit to the individual in charge in a professional manner. Avoid giving an impression that a predetermination has been made as to the validity of the complaint.

1. The appropriate regulatory material (i.e. survey report form and interpretive guidelines) will be used. A parital survey will be conducted focusing on the specific regulatory requirements relating to the complaint. An appropriate sample of residents/patients, rooms, records, services, etc. will be reviewed as necessary to adequately assess compliance with applicable requirements. If, based on initial assessment or other observations, significant problems are identified, the scope of the review shall be expanded as necessary.

F. Following the investigation, the reviewer will discuss freely his findings and intended report with the person in charge. If the reviewer finds there are any situations existing which could jeopardize the health and safety of residents/patients, the person in charge shall be informed. An investigation of alleged substandard care shall cover not only the care given to the patient directly involved, but shall also assess the facility's patterns of patient care related to the complaint.

1. Upon completion of the investigation review, the relevant portions of the survey report form if appropriate will become a part of the complaint record.

2. If a certification related complaint is fully or partially substantiated, all deficiencies will be recorded on a HCFA-2567 and a plan of correction will be obtained. Completed HCFA-2567 shall be a part of the complaint record.

3. Deficiencies related to lciensing rules and regulations will be recorded on a licensing deficiency list, a plan of correction will be obtained, and shall be a part of the complaint record.

IV. Action following Investigation

A. Complaint report. - Following the on-site visit, the reviewer will complete a written report. The report is to be detailed, containing

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factual information describing the investigation. Describe what is wrong, and include any instances in which it is found that a patient or resident's health or safety has been endangered by the deficiency, or why it is believed it might jeopardize the patient's health and safety. Include if there is any evidence the facility was aware of the problem and had attempted to remedy the situation. If the investigation discloses evidence a threat to resident health or safety exists the facility must take immediate corrective action, which will be monitored through an on-site revisit to ensure correction of the problem.

B. Letter to complainant. - In all allegations within the Division's jurisdiction, the complainant will receive a letter from the individual who completed the investigation informing them the investigation has been conducted and its resolution.

C. Following the investigation, deficiencies relating to Medicare/ Medicaid certification will be recorded on a HCFA-2567 and licensing deficiencies will be recorded on the licensing deficiency statement of deficiencies and plan of correction form. This information will be provided to the chief executive officer/administrator of the health care facility. Where appropriate, a copy will be forwarded to the president of the governing body. A plan of correction for each deficiency will be requested. Prior to dissemination of any correspondence to a complainant or facility, correspondence will be reviewed with the appropriate manager.

In the case of a certified provider subsequent certification shall depend on the nature of deficiencies cited and the operator's willingness or ability to correct them. The investigation findings may require state licensure action, however if Medicare or Medicaid requirements are not met, Federal certification procedures will be followed.

D. When deficiencies with federal requirements are identified, certification action shall be initiated as follows:

1. Immediate and serious threat to patient health and safety. - Certify non-compliance and initiate expedited termination procedures according to Federal Guidelines.

2. Condition of participation/coverate not met (no immediate and serious threat). - Certify non-compliance and initiate termination or intermediate sanction (ban on new admissions) according to Federal Guidelines.

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3. All conditions met. - Facility unable or unwilling to provide acceptable plan of correction for other deficiencies: The facility may not participate without an acceptable plan of correction. If it is unwilling to provide a plan of correction within 45 days, certify non-compliance and forward all related supporting documentation to the Regional Office. In the absence of an acceptable plan of correction, the Regional Office will not apply the intermediate sanction, since it is not available to a provider without a plan of correction.

4. All conditions met. - Facility provides an acceptable plan of correction for other deficiencies. - Certify compliance based upon acceptable plan of correction and assemble documentation from Regional Office review.

5. No uncorrected deficiencies. - No certification action required.

E. Reporting. - All necessary documentation shall be submitted to the Regional Office or State Medicaid Agency since these offices are obligated to formally determine whether to continue or terminate eligibility based upon our certification. For substantiated complaints in Medicare facilities submit, at a minimum, the HCFA-2567 and HCFA-1539. If an adverse action is involved, a HCFA-462 (Adverse Action Extract) is also required. A HCFA-562 is completed if patient health and safety are affected. (Do not use the HCFA-562 for unsubstantiated complaints, or accredited hospitals, CLIA lab, or blood transfusion fatality complaints. If the allegations are substantiated, the form is not necessary when the deficiencies are below the condition level and patient health and safety are not affected.)

1. Post investigation recording is as follows:

   a. In accordance with Federal Guidelines routine reporting to the Regional Office for substantiated complaints shall include:

      1. Immediate and serious threat to patient health and safety. Forward HCFA-562, HCFA-462, HCFA-2567, HCFA-1539, and any appropriate supporting documentation to the Regional Office in 3 working days following the on-site.

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2. Condition of participation/coverage not met (no immediate and serious threat to patient health and safety) or facility unable or unwilling to provide acceptable plan of correction for other deficiencies. Forward HCFA-562,HCFA- 462, HCFA-2567, HCFA-1539, and any appropriate supporting documentation to the Regional Office in 10 calendar days following on-site visit for SNFs, otherwise, 45 calendar days.

3. All conditions met. - Facility provided an acceptable plan of correction for other deficiencies but those deficiencies affect patient health and safety. Forward HCFA-562, HCFA-2567, and HCFA-1539 in 90 calendar days following on-site visit.

4. All conditions met. - Acceptable plan of correction for other deficiencies which do not affect patient health and safety. Forward HCFA-2567 and HCFA-1539 only in 90 calendar days following an on-site visit.

V. Administrative Procedures

A. The survey process manager or utilization review team manager will complete the receipt portion of the Complaint Receipt and Disposition form (SFN-8035), and attach the sheet to the pertinent information that has been received. Separate complaint logs shall be kept by the appropriate manager and they shall enter the required information on the complaint log.

B. The staff member, who is assigned to investigate the complaint, will be responsible for completing the remainder of the form with supporting documentation. The complaint investigator returns the form and any documents, letters, etc. resulting from the investigation to the appropriate manager for completion of administrative processing.

C. Instructions for completion of the complaint log:

All complaints shall be logged on separate forms by the appropriate manager. The log shall be maintained on a quarterly basis. Copies of the log including certified programs for the current quarter shall be submitted to the Regional Office within 15 days after the quarter ends.

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Information included on the log is as follows:

1. Facility. - Include name of facility, address, provider number, and current license number.

2. Date received. - Include all dates, information concerning this complaint was received. Example: if telephone contact was made by complainant on one date and this was followed by mail correspondence on another day, indicate both dates followed by the type of contact made.

3. Source of complaint. - Indicate whether the source is patient, family of patient, staff, etc. If complaint was referred through another agency or department, indicate this in this portion of log.

4. Type of facility. - Include whether facility is a nursing facility, hospital (identify if accredited or non-accredited), basic care facility, home health agency, etc. Also include if certified for Title 18, 19 or both.

5. Nature of complaint. - Classify nature of complaint into the following categories:

   a. Patient abuse.

   b. Patient rights.

   c. Patient care.

   d. Physical environment.

6. Action taken. - Identify whether complaint was investigated on-site, by mail, forwarded to Regional Office, or referred to another agency or department.

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7. Result of investigation. - Identify whether allegations were validated, not validated, or not able to be verified. Also, include action taken on all complaints validated (adverse action and type, HCFA-2567, licensing deficiency, etc.).

VI. Policy Position: Investigative responsibilities cannot be delegated to other agencies even though there may be arrangements for the exchange and processing of other information with these agencies. While cooperating and integrating efforts with other organizations, as authorized by applicable law, the Health Facilities Division will remain responsible for the investigation and resolution of all complaints received that are applicable to programs and facilities that are licensed or certified.

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